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**Supreme Court of the United States**

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**OCTOBER TERM, 1943.**

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**No. 345.**

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**EMANUEL POLLOCK, APPELLANT,**

**VS.**

**H. T. WILLIAMS, AS SHERIFF OF BREVARD COUNTY,  
FLORIDA, APPELLEE.**

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**BRIEF OF APPELLANT.**

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**BRIEF OF APPELLANT.**

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## **OPINION DELIVERED BY THE COURT BELOW.**

The opinion of the court below will be found reported as *Williams v. Pollock*, 14 So. 2d 700. The official report containing the opinion has not yet been printed and distributed.

## **JURISDICTION.**

A complete jurisdictional statement has heretofore been filed and printed, and this Court, on October 25, 1943, noted probable jurisdiction and transferred the cause to the summary docket (R. 24). Jurisdiction is based upon Section 237(a) of the United States Code.

Briefly, the Supreme Court of Florida, the highest court of the State, has held that Chapter 7917, Laws of Florida, 1919, re-enacted and brought forward in Florida Statutes, 1941, as Sections 817.09 and 817.10,<sup>1</sup> is a valid and subsisting statute of the State of Florida, notwithstanding the contentions of the appellant, who has been convicted for a violation of said statute, sentenced to jail and imprisoned by virtue of said conviction, that said statute is repugnant to the Thirteenth Amendment to the Constitution of the United States,<sup>2</sup> and laws duly enacted

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<sup>1</sup>Chapter 7917, Laws of Florida, 1919, reads as follows:

"An Act to Provide a Penalty to be Imposed Upon Any Person in This State Who Shall, With Intent to Injure and Defraud, Obtain or procure Money or Other Thing of Value on a Contract or Promise to Perform Labor or Service and Prescribing a Rule of Evidence Governing Same.

"Be It Enacted by the Legislature of the State of Florida:

"Section 1. Any person in this State who shall with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service, procure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding Five Hundred (\$500) Dollars, or by imprisonment not exceeding six months.

"Sec. 2. In all prosecutions for a violation of the foregoing section the failure or refusal, without just cause to perform such labor or service or pay for the money or other thing of value so obtained or procured shall be *prima facie* evidence of the intent to injure and defraud.

"Sec. 3. This Act shall take effect immediately upon its passage and approval.

"Approved June 7, 1919."

<sup>2</sup>The Thirteenth Amendment reads as follows:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

thereunder, particularly Section 56, Title 8, of the United States Code,<sup>3</sup> and that said statutes, and the conviction and sentence thereunder, deny to him the equal protection of the laws and deprive him of his liberty without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.<sup>4</sup> Under the circumstances, it is contended that this Court has jurisdiction.

Sections 817.09 and 817.10, Florida Statutes, 1941, are identical with Sections 1 and 2, respectively, of Chapter 7917, changing the reference to "foregoing section" contained in Section 2 above, to "§817.09."

## STATEMENT OF THE CASE.

### Pleadings and Proceedings.

The facts, so far as they are stated in the record are simple and brief. The appellant was arrested January 5, 1943 (R. 3), on a warrant charging as follows:

"C. W. Bates has this day made oath before me that on the 17th day of October, A. D. 1942, in this

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<sup>3</sup>Section 56 of Title 8, United States Code, reads as follows:

"The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any person as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

<sup>4</sup>Pertinent parts of the Fourteenth Amendment reads as follows:

"Section 1. . . . nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

county aforesaid, one Mann Pollock did then and there, with intent to injure and defraud under and by reason of a contract and promise to perform labor and service procure and obtain money, to-wit: the sum of \$5, as advance from one J. V. D'Albora, a corporation" (R. 3).

He was immediately, on the same day (R. 4), taken before the County Judge<sup>5</sup> of Brevard County, Florida. He admitted to the Judge that he owed his former employer some money and had quit work (R. 2). Thereupon, a plea of guilty was entered of record and, on the same day, he was adjudged guilty and sentenced to pay a fine of \$100, and upon default in the payment thereof, to be confined in the County jail for a period of 60 days (R. 2). As he had no money (R. 4) he was thereupon committed to jail (R. 5).

It further appears, and is not denied, that the appellant was unable to employ counsel, did not know and was not advised concerning his right to counsel, none was furnished him, and he did not understand the nature of the charge against him, but understood that if he owed his former employer any money, and had quit his employment, he was guilty as charged (R. 2).

It is conceded by all parties that the affidavit and warrant were based upon Chapter 7917, Laws of Florida, 1919 (Sections 817.09 and 817.10, Statutes of Florida, 1941), heretofore quoted, which purport to make it a criminal offense to obtain money as a credit or advance, with an intent to injure or defraud, upon a contract or promise to perform labor or service, and further provides that proof of obtaining the money on such a promise, and the failure to perform the labor or service or repay

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<sup>5</sup>County judges are not required to be "learned in the law," and have jurisdiction in criminal cases where the punishment may not exceed a fine of \$500 and imprisonment not exceeding six months in counties having no Criminal Court of Record. Brevard County has no Criminal Court of Record.

the money shall be *prima facie* evidence of an intent to defraud.

On January 11, 1943, the appellant filed a petition for a writ of habeas corpus alleging the foregoing facts and conclusions of law as grounds for his release from imprisonment. Upon issuance of the writ and the return thereto (R. 4, 5), the Circuit Court of Brevard County held the statute to be unconstitutional and discharged the appellant from the custody of the appellee (R. 5). Upon appeal to the Supreme Court, the judgment was reversed (R. 15), in accordance with the opinion filed in the cause (R. 9). This opinion held that the statute and sentence were valid.

#### **Additional Facts.**

As this Court held in *Bailey v. Alabama*, 219 U. S. 219, that the validity of the statute depends upon what can be done under it, rather than what was done, other facts may be inferred from the record, though not directly stated.

As the court observed in the *Bailey* case, it is not important that the appellant is a negro, other than to remind the court that members of that race nearly always are the objects and victims of such legislation. Generally, their improvidence and unconcern about anything but the present and the immediate future make them peculiarly receptive to offers of advances of money or credit, and this, with their usual inability to repay the money except by continuing their labor, their ignorance of the law and courts, as well as the lack of ready money to employ counsel, and the uneven struggle between them and their white employers before a jury, combine to make it much easier to compel them to continue in service against their will than it is to terrorize and force a white man into such a state of bondage. But the law, on its face, applies to all without regard to color, though we

seriously doubt that any white man has ever been convicted under it.<sup>6</sup>

That the appellant is ignorant and uneducated may be inferred from the fact that he signed the petition by his mark, being unable to write even his name, and from his allegations, under oath and not denied, that he was ignorant of his right to counsel, as well as of the nature of the charge against him and of his defense to it.

It may be inferred from the affidavit that the appellant began work for J. V. D'Albora, a corporation, on, or perhaps before, October 17, 1942, and on that date he became indebted to the corporation in the sum of \$5; that on or about January 2, 1943, he quit his employment without paying the \$5. Of course, the sum owing may have been more or less than that amount originally, and may have fluctuated from time to time, as such details are not important to the validity of a warrant or a trial under it. We say that the foregoing may be inferred, because, had the appellant obtained the money in October and had not performed any work until the next January, it is unlikely that the corporation would have waited so long to have had him arrested, or, having waited, would be stirred to such action at that late date. At any rate, the statute, as written, would apply to either state of facts, and the charge could have been proven under the warrant with like effect.

So, we have a state of facts which, under the statute, rendered the appellant guilty of the alleged offense, whatever his secret intent may have been. The possibility that a jury might have found him not guilty on proof of the existence of the contract and debt and his failure to work any longer, is no greater than in any other class of cases, so that the inducement to plead guilty to avoid a heavier sentence, and the coercion thus imposed on other ignorant laborers to continue their labor against their will in order to avoid a similar fate, was and is great, if not compelling.<sup>7</sup>

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<sup>6</sup>Our only reason for the doubt is the remarks of Judge Swayne to the Grand Jury, reported in 138 Fed. 686, 690.

<sup>7</sup>See footnote, page 12.

## **SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.**

Only three errors were assigned and all of them are urged here. They are as follows, but more logically arranged:

1. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Thirteenth Amendment to the United States Constitution and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights under said Amendment to the Constitution of the United States.

Affirmatively stated: A statute that permits imprisonment for failure to perform a contract to labor encourages and maintains involuntary servitude, whether a provision making such failure *prima facie* evidence of an intent to defraud is or is not invoked in a particular case.

2. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to Section 56, Title 8, of the United States Code, formerly Section 1990, Revised Statutes of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights under said section of the laws of the United States.

Affirmatively stated: A statute that permits imprisonment for failure to perform a contract to

labor, on which money has been advanced, is one made, or tending, to establish, maintain or enforce, directly or indirectly, the voluntary or involuntary service or labor of persons as peons, in liquidation of a debt or obligation, and is null and void when enacted; and that the procedure in a particular prosecution is immaterial to the unlawfulness of a conviction under the statute.

3. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Fourteenth Amendment to the Constitution of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights to the equal protection of the laws, and to due process of law.

**Affirmatively stated:** A statute that is directed solely at those who contract to labor, and not at those who make other kinds of contracts, and who obtain advances, but fail to perform the contract, and which does not permit the punishment of the employer for obtaining the labor without paying for it, denies to laborers the equal protection of the laws, and a conviction under the statute denies due process of law; and due process in such cases is further denied by the conviction on a plea of guilty of an ignorant negro, uninformed as to the nature of the charge and his defense, and who is without money or counsel, the arrest, arraignment, so-called trial, conviction and commitment to jail all occurring on the same day.

## ARGUMENT.

### I.

**The judgment of the Supreme Court should be reversed solely on authority of *Taylor v. Georgia*, 315 U. S. 25.**

It is our view that the decision of this Court in *Taylor v. Georgia*, 315 U. S. 25, was erroneously interpreted by the Supreme Court of Florida, and that its judgment should be reversed on authority of that case.

It will be observed that the Supreme Court of Florida has held, and we think correctly, that so far as the question here is involved, there is no material difference between the first and second sections, respectively, of the Alabama statute (before the Court in *Bailey v. Alabama*, 219 U. S. 219), the Georgia statute (*Taylor v. Georgia*, *supra*) and the Florida statute, now under review.

It is true that, in *Bailey v. Alabama*, *supra*, the Court did not, in terms, hold the entire statute to be bad, though ample reasons for so holding were announced in the opinion. In *Taylor v. Georgia*, however, this Court not only stated that both sections were under attack, but used the plural term throughout the opinion, concluding:

“We think that the sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment and to the Act of 1867, and that the conviction must therefore be reversed.”

We do not assume, as does the Supreme Court of Florida, that this Court would inadvisedly use such positive and explicit terms, or, if only the second section was condemned, fail to indicate in the opinion, judgment or mandate, all of which are before us, that a new trial should be granted, as would be appropriate if the first section is valid, and the State officers should be of the opinion that

a conviction might be had without the aid of the statutory presumption.

It is, of course, solely within the knowledge of this Court whether the Supreme Court of Florida or appellant has correctly understood the scope of the decision in *Taylor v. Georgia*; but we believe that we should suggest that the Supreme Court of Georgia, upon receipt of the mandate of this Court, construed the decision as we do. In *Taylor v. State*, 19 S. E. 2d 267, the case was finally disposed of, by saying:

"The Supreme Court of the United States having reversed the decision and judgment of this court (*Taylor v. State*, 191 Ga. 612, 13 S. E. 2d 647), affirming the judgment of the trial court, it is hereby ordered that such decision be vacated, and that the judgment of the superior court of Wilkinson County be reversed."

No leave or direction for a new trial was given or indicated. Indeed, it seems that the officials of Alabama must have given the same interpretation to *Bailey v. Alabama*, for, though a number of cases involving the statute reached the appellate courts of that State prior to the decision of this Court in 1911, we can find none since that date. While this is not conclusive that there has been no attempt to enforce the statute, it would seem that at least one case would have reached the appellate courts in 33 years, if the officers or courts believed that any remnant of the statute remains in force.

If we are correct in our conclusion, the remainder of this brief requires no consideration.

## II.

A fair construction of the statute involved, in view of its context, history and operation, necessarily leads to the conclusion that the legislative intent and purpose, and its obvious use and effect, is to implement employers with an instrumentality of the state with which to establish, maintain and enforce, directly or indirectly, the voluntary or involuntary service or labor of peons, in liquidation of debts or obligations.

### The State Court Decision.

**Supreme Court of Florida did not hold second section severable**

The Supreme Court of Florida did not attempt to avoid the Federal question by holding the second section unconstitutional, and that the Legislature would have enacted the first section alone, had it known that the second section was repugnant to the Constitution, rendering the latter severable and proper to be eliminated entirely from the act. Indeed, it could not logically reach such a result, when the Legislature has repeatedly, over a period of 52 years, re-enacted it in various forms in its effort to avoid the effect of decisions of this Court and the State Supreme Court, but always embodied in it the basic idea that has been so repeatedly and plainly condemned.

The Supreme Court of Florida reached the conclusion that this Court has condemned the act only when the second section is "brought into play" in the formal trial of the case.

We can only construe this to be an attempt to apply the rule that a party can not be heard to challenge the invalidity of a statute where no provision of the statute which may be violative of the constitutional rights of others, or his rights under other circumstances, has been invoked against him. Such a rule exists;

**Limitation  
of rule as to  
party entitled  
to challenge  
statute**

but where the entire statute is unconstitutional, then he has the right to object to the application of any part of it to him, though the effect of the portion so applied to him does not otherwise violate any constitutional right. The Supreme Court of Florida has, in other cases, so held. *McSween v. State Live Stock Sanitary Board*, 97 Fla. 749, 122 So. 239, 65 A. L. R. 508. And this rule has also been recognized by this Court. *Mountain Timber Co. v. Washington*, 243 U. S. 219.<sup>8</sup>

It follows then that if the first section of the act, standing alone, is unconstitutional, or both of the sections are unconstitutional, or if the presence of the second section renders the entire act unconstitutional, the imprisonment of appellant was unlawful.

**Respective Contentions.**

The appellant contends that the statute was passed with a distinct object and purpose, and its effect is, contrary to the positive prohibitions contained in the Thir-

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<sup>8</sup>The effect of the plea of guilty in this case can be no more than admission that, if the statute under which the charge was made is constitutional, the State could prove what the statute requires. We understand that, when the case of *Taylor v. Georgia* was argued at the bar, Mr. Justice Frankfurter commented that the only effect of the waiver of grounds for a new trial, based upon the merits, was to admit that, if the statute was constitutional, the State had sufficiently proved its case, and language implying the same conclusion is found in the opinion. Of course, we argue, that the unconstitutionality of the statute, the arrest, arraignment, conviction, sentence and imprisonment all on the same day, his helpless condition, his ignorance, lack of advice of counsel or friends, and the absence of a full explanation of the elements of the supposed crime, all combined to coerce the plea which was entered for, and not by, him, and that this plea is not, in fact, the admission of anything.

teenth Amendment and the Act of 1867,<sup>9</sup> whether the second section is ever formally relied upon in court against an accused, and regardless of whether it is declared valid or invalid by the courts of the State.

The appellant contends that it is not a case where two offenses, one valid and the other invalid, are combined in one act of the Legislature, or some incidental and unnecessary unconstitutional provision is engrafted into a statute having a valid object, purpose and effect, but that if the second section is disregarded, a criminal offense of different scope, affecting a distinctly different group, and having a different, though none the less unconstitutional effect, will emerge; and the appellant has been convicted of an offense never prescribed by the Legislature, and therefore has been deprived of his liberty without due process of law.<sup>10</sup>

The appellant also contends that the statute attempts to justify punishment for acts committed by laborers, while their employers, who may defraud them under like circumstances and by reason of an identical contract or promise, as well as others committing substantially the same acts, are not punished. And, also, that the statute deprives appellant and others of their freedom to contract and to work for whom they please, so long as they are indebted to a former employer, by reason of the fear of punishment, and is violative of the due process clause of the Constitution.

We understand that the contention of the appellee is grounded on the propositions (1) that the second section is unconstitutional and should be eliminated from the statute; (2) that the first section is an ordinary statute to punish the obtaining of property by false pretenses or

<sup>9</sup>Section 56, Title 8, U. S. C.

<sup>10</sup>*Sprague v. Thompson*, 118 U. S. 90; *Skinner v. Oklahoma*, 316 U. S. 535; dissenting opinion Justice Brandeis in *Nat. Life Ins. Co. v. U. S.*, 277 U. S. 508, 534, 535

promises, which the State is not required to extend so as to cover all persons who may obtain property in that manner; and (3) that because of his plea of guilty, the rule of evidence prescribed by the second section was not formally used against appellant in court.

### **The Decision of the State Court As Avoiding Unconstitutionality of Statute.**

If we view the decision of the Supreme Court of Florida realistically, an appropriate syllabus would read about as follows:

"If a defendant pleads not guilty to a charge of violating the statute, and stands trial, it is possible that the courts of Florida will not apply section 2 of the Act; but both sections may remain on the statute books, *prima facie* valid, even though the effect is to create fear in an employee, indebted to his employer, to the extent that he will endure involuntary servitude, or so operate on the mind of an ignorant and penniless prisoner as to coerce him into pleading guilty to a violation of the first section."

We shall again refer to this in connection with the Fourteenth Amendment. At present, we are concerned with the power and disposition of this Court in dealing with a situation thus presented by the State court and with arguments that we anticipate from the appellee.

In *Hanover Fire Insurance Co. v. Harding*, 272 U. S. 494, this Court said:

"It is true that the interpretation put upon a tax law of a state by its supreme court is binding upon this court as to its meaning, but it is not true that this court in accepting the meaning thus given may not exercise its independent judgment whether with the meaning given, its effect would not involve a violation of the Federal Constitution."

More apt in this situation, perhaps, is the language in *St. Louis Southwestern R. Co. v. Arkansas*, 235 U. S. 350, where it is said:

"Upon the mere question of construction we are, of course, concluded by the decision of the state court of last resort. But when the question is whether a tax imposed by a state deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the state court. We must regard the substance rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the state."

The point which is our objective is illustrated in the case of *Henderson v. Wickham*, 92 U. S. 259 (cited in the second *Bailey v. Alabama*), where the State was held to have imposed a passenger head tax against steamship lines under the guise of only permitting its payment to avoid the giving of a large and continuing bond for each passenger. The court looked to the ordinary effect, rather than the form of the statute. And so, in *Bailey v. Alabama*, 219 U. S. 219, we find this language:

"We cannot escape the conclusion that, although the statute in terms is to punish fraud, still its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt; and judging its purpose by its effect, that it seeks in this way to provide the means of compulsion through which performance of such service may be secured. The question is whether such a statute is constitutional."

We must not overlook that we are concerned not only with the general language of the Thirteenth Amendment, though it is of wide and comprehensive scope, but with the Act of 1867, *supra*, which in terms prohibits the States from passing any statute that is made directly or indi-

rectly to establish, maintain or enforce voluntary or involuntary servitude for the payment of a debt.<sup>11</sup>

**Supreme Court exercises independent judgment as to the effect of state statute on constitutional rights** The court, then, is concerned with the effect of the statute, and is not bound by the utterances of the State court which it might be contended, removes an unconstitutional clause, if the purpose of the act and the uses to which it may be put, notwithstanding the decision of the state court, is repugnant to the Thirteenth Amendment or the Act of Congress. This Court has independent jurisdiction to decide these questions, without being bound by the State decision.<sup>12</sup>

**Supreme Court of Florida has not construed first section of statute** And, it must be clear that the Supreme Court of Florida has not attempted to construe the first section of the statute,<sup>13</sup> or determine the intent or purpose of the Legislature, or the uses and purposes to which the statute, with or without the second section, may be put, so there is nothing in

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<sup>11</sup>This point was particularly emphasized in *U. S. v. Reynolds*, 235 U. S. 133, 148, 149, holding that where these provisions are involved, the Supreme Court must look to the effect of the State statute, and exercise its judgment, independent of the decision of the State Court. Significantly, it was said:

"If such state statutes, upon their face, or in the manner of their administration, have the effect to deny rights secured by the Federal Constitution, or to nullify statutes passed in pursuance thereto, they must fail."

<sup>12</sup>*Sola Electric Co. v. Jefferson Electric Co.*, 317 U. S. 173; *Scott v. McNeal*, 154 U. S. 34; *Truax v. Corrigan*, 257 U. S. 312.

<sup>13</sup>"The controlling construction of the statute is the affirmation of this judgment of conviction." *Bailey v. Alabama; Taylor v. Georgia*. The Supreme Court of Georgia had held that the Georgia statute required proof of an initial fraudulent intent. The Florida court has not done, and can not do, more. This construction does not rescue the statute from its plain object and effect, the creation of such fear as will overcome any desire, fraudulent or innocent, of a citizen to exercise his right to work for whomsoever he pleases.

these respects which even purport to be binding on this Court.

**Unconstitutional section is in pari materia and is to be considered in ascertaining intent of legislature**

Not only may all preceding statutes on this subject be considered in construing Section 1, but even after holding Section 2 to be unconstitutional, the court may read it in construing it, in order to determine whether it, too, is repugnant to the Constitution or Act of Congress. To refuse to give force and validity to an act, or a section of an act is one thing; to refuse to read or consider it is quite another. To "strike out" a section as unconstitutional means merely to refuse to enforce it, and does not obliterate it from the books and from the mind and memory of mankind. *Baird v. Hutchinson*, 179 Ill. 435, 53 N. E. 567; *Board of Comrs. v. State*, 184 Ind. 418, 111 N. E. 417.

**Legislative intent and purpose, as well as effect of statute is to violate 13th Amendment and Act of 1867**

If, then, we construe the whole act, or the first section alone, in the light of the second section, it is inescapable that the legislative intent and purpose, and the obvious effect of the statute, are to place in the hands of an employer, a weapon, powered by the force of the State, by which he can "establish, maintain and enforce" voluntary or involuntary servitude in liquidation of a debt or an obligation.

The Supreme Court of Florida has not held the second section to be void and severable. But if it had so held, but upheld the first section as valid and subsisting, it would merely have put out of action some of the accessories with which the weapon was

**To hold first section valid and second section invalid merely reduces but does not destroy repugnancy to Constitution and Act of Congress.**

equipped to facilitate its use, and there would remain enough to coerce those most susceptible to unlawful use of such a law, the ignorant, improvident and helpless laborer. It does not suffice merely to impair the effectiveness of the statute, particularly

that portion alone that would only operate *in camera* against the better informed victim with a little money, who refuses to be coerced, and stands trial, prepared to continue the litigation to the highest courts. To rescue the statute from its conflict with the Thirteenth Amendment and the Act of 1867 would require a construction not merely limiting, but entirely eliminating the effect or use contrary to those provisions, which as we see it,

**Total eradication of statute only effective remedy**

would not only frustrate the obvious legislative intent, but would destroy every vestige of the statute. The Supreme Court of Florida has not so construed the statute, and its decision is therefore error.<sup>14</sup>

### **History of Legislation.**

The original statute of 1891, as will hereafter appear,<sup>15</sup> did not make a conviction depend upon an infer-

<sup>14</sup>Suppose a person desires to borrow money with every intention of repaying it. The lender, being in need of labor, will not make the loan unless the borrower agrees to work it out. The latter falsely promises to work in order to get the money, but retains his intent to repay it and does repay it when it is due to be paid. Disregarding the second section, and considering only the first, would not the borrower be guilty of its violation, assuming the statute to be valid, without regard to the manner in which the charge is proved? And if this is true, it is clear that the statute actually is designed to punish the breach of a contract to labor, because, had the subsidiary promise been to repay in potatoes or some other species of property, there would have been no violation, and in either case, if there was an intent to repay in money, no other statute of the State of Florida would be violated.

<sup>15</sup>See page 23.

ence from a statutory rule of evidence, but made the abandonment of the service without first repaying the money an element of the offense.<sup>16</sup> Fourteen years afterwards this Court, in *Clyatt v. U. S.*, 197 U. S. 207, made it clear that such an act was invalid.

The lawmakers, by that statute, thus placed a powerful weapon in the hands of employers, calculated at once to handle with strong hand, and to insure servile obedience from, the poor, ignorant and helpless, white or black; a system calculated to establish and perpetuate long hours, low wages, and sub-standard living and working conditions; in other words, a condition of peonage.

The statute complemented the commissary and trade coupon system, which was rendered innocuous by Chapter 6914, Laws of 1915. Under that system, laborers employed by plantations, naval stores operators, lumber and phosphate companies, rarely ever received any money, and were always in debt, because they were paid, usually in advance, in coupons or "script" redeemable only in goods purchased at the commissary.

There was a great labor shortage in the State during the period immediately before and after 1891. In "*Florida*," by George M. Chapin, page 558, it is said:

"There was a call for labor far greater than the supply in some parts of the state, especially

<sup>16</sup>It is not reasonable to suppose that this, and the later statutes, were passed merely to punish frauds. Chapter 1637, Laws of 1868, now section 817.29, Florida Statutes of 1941, makes the commission of "gross fraud or cheat at common law" a crime, and in 1891, Section 50 of Chapter 1637, Laws of 1878, and in 1919, Chapter 6807, Laws of 1915, now section 817.01, Florida Statutes, 1941, were in force, making it a crime to obtain money or property by false pretenses. While permitting punishment by fine or imprisonment in the county jail, all of these statutes permit punishment by not more than ten years imprisonment in the State prison, and are therefore not within the jurisdiction of the county judge. Constitution, Art. V, Sec. 17, Florida Statutes, 1941, Sec. 36.01.

for the development of the phosphate mines which became commercially important about 1890. The result was a proposition to sell the convict labor. Its acceptance would bring an income to the state instead of an annual deficit, and eventually the state prisoners, white and black, male and female, were transferred to lessees, who employed them in the phosphate mines and in turpentine and lumber camps throughout the state."

Other histories show that about the same time there was a great deal of railroad expansion, and the turpentine, or naval stores, industry became important, with the exhaustion of great sources of these products in Georgia and other pine growing states of the Southeast.

Power to lease State and County convicts had existed since 1877. With the shortage of labor, this became an important and cheap source of surplus labor, and the system continued until power to lease to private persons was withdrawn at the extraordinary session of the Legislature in 1918.

These industries then had two sources of cheap labor, the convicts and those held by the fact that they were always in debt to their employers. But there was no way of preventing the free labor from running away to railroad and other jobs where they could receive cash for their labor.

By passing the statute of 1891, this problem was simplified for the other industries. As long as the laborer was satisfied with his condition, all was well. If, however, he became independent, and left in search of another job, the employer sent a warrant for him,<sup>17</sup> he was convicted and leased back to the employer. After

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<sup>17</sup>Of course, a warrant charging any crime would serve the purpose; but there was always risk involved in trumping up a charge. The statute, however, was so framed that the negro was always guilty of its violation, making it convenient, and at least giving the employer and the officers a plausible excuse for their conduct if Federal Grand Juries became inquisitive.

serving his sentence he and his fellow workers were compelled to be content, for without doubt, the living condition of the free labor was, in some respects, better than the convicts.

After the repeal of the leasing system in 1918, this statute increased in importance. And, as will appear later, the existing statute similar to that of 1891 having been held unconstitutional by the Supreme Court of Florida<sup>18</sup> less than three months before the convening of the 1919 session of the Legislature, something had to be done by these industries, as the labor shortage produced by the World War I had not yet been relieved. The statute under attack was the result.

After *Clyatt v. U. S.*, the language was modified, hoping that the courts, having stricken down this harsh beginning, would be satisfied that the Constitution had been vindicated and preserved, and concede half-a-loaf. The courts again frowned on this effort. Further altering the rigors of the enactment from time to time, but making it no less offensive, the present statute was finally evolved. The Attorney General virtually concedes that the second section of the statute is void, but he also virtually says that the Legislature, having cut out a little here and a little there of its original enactment, but, remaining of the same opinion still, would be satisfied with such crumbs of the original loaf as the court may ration to it. No doubt this is because the skeleton remaining will be almost as effective in frightening the ignorant negro laborer, as would the living body of the original statute.

Peonage was a system that was practiced in full vigor in Mexico until recently, and is not yet entirely obliterated there. The system was in effect in the Mexican territory that was incorporated into our Union, particularly in New Mexico. Its essential form consisted in the advance of a small sum of money or goods by a pro-

<sup>18</sup>*Goode v. Nelson*, 73 Fla. 219, 74 So. 17.

posed employer of the peon, and a promise by the peon to work for the employer until the indebtedness should be paid. The relation, once having been established, was calculated to continue in perpetuity. Wages under the system were naturally meagre and barely sufficient for the peon and his family to exist, so that earnings were constantly balanced by additional advances, sometimes aided by curious methods of book-keeping, and as a result the peon still owed the debt after years of labor. The debt descended from father to son, the servitude being thus perpetuated through many generations. In addition, it became the custom that an employer no longer in need of the labor of the peon could assign his contract to another employer, and the peon was then obliged to work on the same terms for the other. Thus the system differed little from our system of African slavery as it existed prior to the Civil War, except for the fiction of a debt and a contract. In form, the servitude was voluntary; in fact, it was slavery.

The existence of this system in the territories was not the moving cause of the adoption of the Thirteenth Amendment, but the system, as well perhaps as the fear that it might spread throughout the former Slave States as a substitute for slavery, brought about the enactment of the Act of March 2, 1867, which is now Section 56, Title 8, United States Code, heretofore quoted, as well as Sections 444 and 445, Title 18, United States Code, also parts of the Act of March 2, 1867.<sup>19</sup>

That Act is valid under the Thirteenth Amendment, as it is a partial exercise of the power given to Congress

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<sup>19</sup>Section 444. Whoever holds, arrests, returns, or causes to be held, arrested or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Section 445. Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of section 444 of this title, shall be liable to the penalties therein prescribed.

by the Thirteenth Amendment. *Clyatt v. U. S.*, 197 U. S. 207; *Bailey v. Alabama*, 219 U. S. 219; *U. S. v. Reynolds*, 235 U. S. 133.

Cognate sections of the United States Code clearly indicate a firm determination of Congress to invalidate and prohibit any law, contract or Act that is calculated to promote involuntary servitude, whether voluntarily or involuntarily assumed. Title 8, Sections 41 and 43; Title 18, Sections 51, 52, 443 and 445.

Many States, not all of them in the South, have from time to time enacted statutes which attempt to punish those who do not desire to work, or seek to exercise their right to choose their employer. Some of these have been held void by the courts of the State; all have been stricken down by the Federal courts whenever and however they have been presented.<sup>20</sup>

**Chapter 4032** Such laws had been enacted in other States  
**1891** many years before 1891. In that year the  
 Legislature of Florida passed Chapter 4032,

heretofore discussed, which reads as follows:

"That from and after the passage of this Act, any person in the State of Florida, who, by false promises and with intent to injure and defraud, obtains from another, any money or personal property, or any person who has entered into a written contract, with, at the time, the intent to defraud, to do or perform any act or service, and in consideration thereof, obtains from the hirer, money or other personal property, and who abandons the service of said hirer without just cause, without first repaying such money or paying for such personal property, shall be deemed guilty of misdemeanor, and on conviction thereof, shall be punished by a fine not less than five nor more than five hundred dollars, or by imprisonment

<sup>20</sup>We are advised and believe that Florida is now the only State in which such a statute is upheld by the Courts and enforced by the officers.

in the county jail not less than thirty days, nor more than one year, or both fine and imprisonment."

The offense, as denounced by this section, consisted of a combination of two necessary elements, first, the obtaining of money or property upon a false promise to perform any act or service, and second, the abandonment of the service without just cause without restitution of what had been obtained.

In 1905, the Supreme Court of the United States decided *Clyatt v. U. S.*, *supra*, and attention was drawn to the subject, because the remarks of the court could lead to no other conclusion but that any person, including officers of the law, who attempted to enforce the statute would be guilty of violating Section 444, Title 18, *afore-said*, as it then existed.<sup>21</sup>

**Chapter 5678** So in 1907, the Legislature enacted Chapter 1907 5678, which read as follows:

"Section 1. That from and after the passage of this Act, any person in the State of Florida, who shall contract with another to perform, for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, or whoever, after having so contracted, shall obtain or procure from the hirer money or other thing of value, with intent not to perform such service, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine of not more than one thousand dollars or by imprisonment in the county jail not more than one year, or by both fine and imprisonment.

"Section 2. That satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor or

<sup>21</sup>This was also emphasized by the District Court, Northern District of Florida, the same year, in a charge to the Grand Jury, 138 Fed. 686.

service was to be performed, without good and sufficient cause, shall be deemed *prima facie* evidence of the intent referred to in the preceding section."

Then, in 1911, came *Bailey v. Alabama*, *supra*, holding a statute of Alabama, nearly identical in terms, especially as to the second section, unconstitutional. In an attempt to meet this situation, the Legislature in 1913, specifically repealed the 1907 Act by Chapter 6528, which

read as follows:

"Section 1. Any person in this State who shall contract with another to perform any labor or service and who shall, by reason of such contract and with the intent to injure and defraud, obtain or procure money or other thing of value as a credit or advances from the person so contracted with and who shall, without just cause, fail or refuse to perform such labor or service or fail or refuse to pay for the money or other thing of value so received upon demand, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment for a period not exceeding six months.

"Section 2. That Chapter 5678, Acts of 1907, be and the same is hereby repealed."

It will be noted that this Act was almost identical with Chapter 5678, the Act of 1907, but omitted the section which authorized or created the presumption of intent to be drawn from the failure to perform the service or make restitution. It again made this failure a necessary element of the crime. One who obtained property under a contract to labor could avoid punishment by performing the labor or returning the property, though his original intent was to defraud.

In 1919 the Supreme Court of Florida, in *Goode v. Nelson*, 73 Fla. 29, 74 So. 17, held this Act void under authority of *Bailey v. Alabama*, *supra*.

Not dismayed, the Legislature tried again, for reasons heretofore stated. It passed Chapter 7917 at the Session of 1919, which is brought forward in **Chapter 7917** Florida Statutes, 1941, as Sections 817.09 and 817.10, heretofore quoted, and which are the sections now under consideration.

In this revision, the portions of the statute permitting the laborer to avoid prosecution by performing the service or restoring the property was eliminated and the provision relating to the presumption of intent to defraud for failure to do so was restored, in the very face of this Court's decision in *Bailey v. Alabama*. Doubtless the legislative intent was an attempt to avoid the effect of *Goode v. Nelson* by the elimination.

This legislative maneuvering is the key to the legislative intent. While it is recognized that the first section,<sup>22</sup> standing alone, exerts a tremendous coercive influence on the mind of an ignorant laborer, an occasional conviction where threats do not avail adds greatly as an example to others. Ease and certainty of conviction are therefore desirable, and to that end, the breach of the contract is the *factum probandum* in a prosecution under this, as well as all prior statutes.

In *Phillips v. Bell*, 84 Fla. 225, 94 So. 699, the Supreme Court of Florida refused to interfere with a conviction under this statute on a plea of guilty, basing the decision principally on the opinion of Mr. Justice Holmes in the first case of *Bailey v. Alabama*, 211 U. S. 452, and upon an erroneous view of the second case of *Bailey v. Alabama*, which error was made plain in the case of *Taylor v. Georgia*. The Supreme Court of Florida de-

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<sup>22</sup>It is, however, evident that the effect of the statute is identical, whether embodied in one, or two, sections; and the legislative purpose, as well as the effect of the statute, is the same in every form in which it has been enacted.

clined to hold the second section unconstitutional or pass upon it, because of the plea of guilty, as in the present case.<sup>23</sup>

Twenty years passed. The statute was re-enacted, without change, by the adoption of the general revision known as Florida Statutes, 1941. In 1943,

**Re-enactments** the revision of 1941 was re-enacted, with  
**1941 1943** corrections only of typographical errors, by Chapter 22000, Laws of Florida, 1943.

At the 1943 session, after the decision of this Court in *Taylor v. Georgia*, a bill to repeal the statute was introduced in the Legislature, and passed the

**Attempt to** House of Representatives, but was held in  
**repeal** a Senate Committee until the expiration of  
**statute** the session, and was never enacted.

Thus, for a period of 52 years the Legislature has persistently maintained on the statute books an act which made the performance of the labor a component part of a crime, or prescribed a rule of evidence which must ordinarily result in a conviction for failure to labor in payment of a debt.

During that period, the statute has been enacted or re-enacted in one or the other of these forms no less than seven times, and the Legislature has at least once refused to repeal it. Four of these enactments were attempts to evade the effect of the then latest condemnation of the courts. None of the seven was an attempt to give effect to the constitutional principles announced in the cases, or showed any intent on the part of the Legislature to yield its views to those of the courts.

### **The First Case of *Bailey v. Alabama*.**

Reliance has been placed upon certain remarks of Mr. Justice Holmes in the first case of *Bailey v. Ala-*

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<sup>23</sup>The court did not consider the coercive effect or the operation in *terrorem* of the statute, nor did the court consider the fact that a plea of guilty to a void statute is a nullity.

*bama*, 211 U. S. 452. Undoubtedly Mr. Justice Holmes said that the first section of the statute was an ordinary statute punishing false pretenses. The views of Mr. Justice Holmes are set forth at greater length in his dissenting opinion in the second case, 219 U. S. 219.

Compared with his many opinions in other cases upholding the rights and liberties of oppressed classes, the views of this distinguished jurist on the question involved were extraordinary. He adopted the narrow legal-

**Personal  
opinion of  
Mr. Justice  
Holmes**

istic conception of the case, and ignored the realistic, oppressive and quite intentional effect and operation of such a statute.<sup>24</sup> Indeed, in the second case, the learned Justice quite frankly embraced the notion that nothing in the Constitution and Acts of Congress

prohibited a State from making it a crime to violate a contract to work, with or without the element of obtaining money or property with intent to defraud.

These, however, were the personal views of Mr. Justice Holmes, and of Mr. Justice Lurton who concurred in the dissent in the second case but was not a member of the court when the first case was decided. It is quite evident, both from the majority opinion of

**Reason for  
first Bailey  
decision**

Mr. Justice Holmes and the dissenting opinion of Mr. Justice Harlan, in the first case, that the court refused to review the question because it was brought up prematurely, as a "short cut," rather than because the court was of the opinion that any part of the act was constitutional.

It is clear, then, that nothing was said in the first *Bailey v. Alabama* case that can be of any help here, and so far as the opinions of the Supreme Court of Florida are based upon it, they must be without support.

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<sup>24</sup>Mr. Justice Holmes receded somewhat from his views upon considering the practical effect of the statute in *U. S. v. Reynolds*, 235 U. S. 150.

### The Second Bailey v. Alabama Case Compared with This Case.

After Bailey was convicted, his case was again brought to this Court. The facts were identical with those here, except that Bailey had the benefit of counsel in time to save proper exceptions to the charges of the court, while here Pollock was brought into court, in custody, surrounded by officials, without knowledge of his rights, and hurried to jail before anyone who could help him was aware of his plight.<sup>25</sup>

At the trial of Bailey the court charged the jury that the failure to perform the service, refund the money or return the property was *prima facie* evidence of the intent to injure or defraud. This, it is argued, distinguishes the case in an attempted application of it here, as the State did not find it necessary to use the presumption because of the plea of guilty in this case.

In approaching the question to be decided, this Court said:

"While, in considering the natural operation and effect of the statute, as amended, we are not limited to the particular facts of the case at the bar, they present an illuminating illustration. We may briefly restate them. Bailey made a contract to work for a year at \$12 a month. He received \$15, and he was to work this out, being entitled monthly only to \$10.75

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<sup>25</sup>Whether this plea of guilty may be treated as a reality may be seriously doubted. As the return did not dispute the facts alleged, and the Circuit Court held the statutes unconstitutional, no evidence was offered or heard. It is not the practice in Florida, except in special cases or circumstances, to hear testimony when no issue is raised by the pleading. The mental duress in this case should at least avoid the implication that the appellant admitted more than the debt and his failure to continue at work or pay the debt. *Waley v. Johnson*, 316 U. S. 101. Cf. *Lisenba v. California*, 314 U. S. 219. Or, that, the State could prove its case, if the Statute was valid, *Taylor v. Georgia*, *supra*.

of his wages. No one was present when he made the contract but himself and the manager of the employing company. There is not a particle of evidence of any circumstance indicating that he made the contract or received the money with any intent to injure or defraud his employer. On the contrary, he actually worked for upwards of a month. His motive in leaving does not appear, the only showing being that it was without legal excuse and that he did not repay the money received. For this he is sentenced to a fine of \$30 and to imprisonment at hard labor, in default of the payment of the fine and costs, for 136 days. Was not the case the same in effect as if the statute had made it a criminal act to leave the service without just cause and without liquidating the debt? To say that he has been found guilty of an intent to injure or defraud his employer, and not merely for breaking his contract and not paying his debt, is a distinction without a difference to Bailey."

So here, in considering the natural operation and effect of the statute, the Court should conceive such a case. In testing the constitutionality of the statute, the court should assume that the same state of facts occurred here, or could well happen in other cases with the same result to the individual concerned. Indeed, the petition and warrant allege facts almost identical.

In discussing another statute of different form, previously held unconstitutional by the Supreme Court of Alabama, this Court said:

"But, judging it by its necessary operation and obvious effect, the fundamental purpose plainly was to compel, under the sanction of the criminal law, the enforcement of the contract for personal service, and the same purpose, tested by like criteria, breathes despite its different phraseology through the amendments of 1903 and 1907 of the statute here in question."

So here, though the Legislature has adopted different phraseology, the fundamental purpose still breathes in the present statute.

The contention of appellee, of course, was, and is here, that the statute was designed for the salutary purpose of punishing fraud, and that the Legislature naturally was innocent of any design to compel involuntary servitude. But this Court said:

"We cannot escape the conclusion that, although the statute in terms is to punish fraud, still its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt; and judging its purpose by its effect, that it seeks in this way to provide the means of compulsion through which performance of such service may be secured. The question is whether such a statute is constitutional."

And, it cannot be doubted that the statute is no less compelling because here and there an ignorant defendant pleads guilty, hopeful of merciful consideration by the justice of the peace or county judge,<sup>26</sup> because, as this Court has held, the invalidity of the statute is grounded on its effect and operation before or without a prosecution; and this effect is to compel involuntary servitude in liquidation of a debt. Thus, it is not material what may or may not happen in those rare instances where the laborer refuses to be driven into peonage, but submits to arrest and prosecution.

Further, considering the effect of the statute, it was said:

"If the statute in this case had authorized the employing company to seize the debtor, and hold him to the service until he paid the \$15 or had furnished the equivalent in labor, its invalidity would not be questioned. It would be equally clear that the state

<sup>26</sup>These officials, not required to be lawyers, have jurisdiction of misdemeanors in Florida.

could not authorize its constabulary to prevent the servant from escaping, and to force him to work out his debt. But the state could not avail itself of the sanction of the criminal law to supply the compulsion any more than it could use or authorize the use of physical force. 'In contemplation of the law, the compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station.' *Ex parte Hollman*, 79 S. C. 22, 21 L. R. A. (N. S.) 249, 60 S. E., p. 24, 14 A. & E. Ann. Cas. 1109."

The court also discussed the effect of such a statute upon the usual and ordinary victim of it:

"What the state may not do directly it may not do indirectly. If it cannot punish the servant as a criminal for the mere failure or refusal to serve without paying his debt, it is not permitted to accomplish the same result by creating a statutory presumption which, upon proof of no other fact, exposes him to conviction and punishment. Without imputing any actual motive to oppress, we must consider the natural operation of the statute here in question (*Henderson v. New York* [*Henderson v. Wickham*], 92 U. S., p. 268, 23 L. Ed. 547) and it is apparent that it furnished a convenient instrument for the coercion which the Constitution and the act of Congress forbids; an instrument of compulsion peculiarly effective as against the poor and the ignorant, its most likely victims. There is no more important concern than to safeguard the freedom of labor upon which alone can enduring prosperity be based."

It was unnecessary for the court to specifically declare all of the Act unconstitutional in order to reverse the judgment, and the final conclusion was so limited. It is evident, however, that none of the statute met with the favor of the court.

There, as here, was an indirect attempt to compel the performance of a contract to labor, by

**Invalidity due to threat, not trial** threatening fine and imprisonment. This is the necessary fact, even though those who reason legalistically and close their eyes to practical matters, may argue that

the first section standing alone is a mere statute prohibiting fraud, because no reasonable man may suppose that anyone could be convicted if he makes a contract to work, draws money in advance and then performs the work, whether the second section is valid or not.<sup>27</sup> It is idle to say that someone, sometime, may have an intent to

**Punishment for initial fraudulent intent, followed by performance, unreasonable**

defraud and procure an advance, after which he repents and does the work, but nevertheless he will be prosecuted and convicted under the statute. The guaranties of the Constitution may not be frittered away by imagining a hypothetical case that every reasonable person knows will never occur. The last paragraph of the opinion quoted finds support in this reasoning.

#### **The Taylor vs. Georgia Case Compared With This Case.**

The facts in the case of *Taylor v. Georgia*, 315 U. S. 25, are practically the same as here, except that the defendant was tried by a jury and was convicted after the court had charged the jury that it might consider the presumption of intent.

We have heretofore quoted the conclusion of this Court. But after stating that the second section of the act itself embodies a substantial prohibition which

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<sup>27</sup>But one who, innocent of an intent to defraud, promises to work and obtains a loan, and fails to do the work, is put in jeopardy, and may be convicted without the aid of the presumption, so that prudence compels him to work against his will, lest he be prosecuted and perhaps be convicted under this statute. The presumption increases his danger, but its absence does not remove it.

squarely contravenes the Thirteenth Amendment, the court continues:

"The necessary consequence is that one who has received an advance on a contract for services which he is unable to repay is bound by threat of penal sanction to remain at his employment until the debt has been discharged. Such coerced labor is peonage. And it is no less so because a presumed initial fraud rather than a subsequent breach of the employment contract is the asserted target of the statute."

So again this Court has drawn attention to the fact that it is the possible success of the statute in the intimidation of the worker, coercing him to work against his will,<sup>28</sup> thereby making a judicial application of the statute, or either section of it, unnecessary, is the circumstance that renders it void, rather than the actual arrest and conviction, however obtained. As the statute is void by reason of its object and purpose before the first prosecution is ever attempted under it, there could be no offense of which the appellant here could stand convicted, by the plea of guilty or otherwise. This is the necessary result of what the Court has said in the second case of *Bailey v. Alabama* and in *Taylor v. Georgia*.

#### Independent Nature of Question Involved.

We have heretofore cited the authorities holding that this Court, in deciding questions arising under the Constitution and laws of the United States is not bound by decisions of the State courts as to the real effect of State statutes.

<sup>28</sup>As the coercion, however accomplished, whether by lawful or unlawful means, is the element so clearly prohibited, then it is immaterial whether the asserted target of the statute is presumed or a real initial fraud. The Act of 1867 prohibits the State from becoming an accessory to the crime of peonage.

The question presented here may be said to approach one *sui generis*. Ordinarily if a state court construes a statute so that it does not conflict with the Constitution or laws of the United States, however strained or unreasonable the construction, the decision is binding upon the Federal courts. It is, however, our position that only by construing this statute not to exist, may this rule apply.

We have here a constitutional and national statutory prohibition that deals with practical effects. It deals with

coercion, with guns, stockades and violence, it is true; but equally prohibited is coercion through fear,<sup>29</sup> poverty, ignorance, and other physical and meta-physical forces that may be employed to bring about the ultimate condition

sought to be prohibited. This prohibition is equally directed at individuals and the State. No amount of legalistic arguments, subterfuges, excuses or manipulation of rhetoric by individuals, legislatures, officers or courts can

prevail in support of a statute which was passed with the intent and for the purpose of specifically enforcing contracts to labor, and the effect of which as originally written, and as it remains on the statute books, is to accomplish that unlawful object.

Even though the Supreme Court of Florida has held that the presumption of intent was not actually used against the appellant because of his plea of guilty, nevertheless he was convicted under a warrant charging the violation of a statute that has no legal existence.

It is our contention, therefore, that if the Supreme Court of Florida had held the second sec-

<sup>29</sup>The freedom from fear mentioned in the Atlantic Charter has not yet been written in binding treaties or completely embodied in the Constitution, but its terms, in part at least, abide in the guaranties of the Thirteenth and Fourteenth Amendments.

**No decision of  
state court can  
revive statute  
totally void  
at inception**

tion unconstitutional (which it has twice declined to do) and had held that it would be error to charge the second section to be the law, such a decision could not breathe life into this still-born statute, void from its inception by reason of the comprehensive language of the Act of 1867.

### **Separability of Statute.<sup>30</sup>**

This Court, in *Taylor v. Georgia, supra*, clearly held that both sections of the statute contained positive prohibitions, repugnant to the Thirteenth Amendment and the Act of 1867. The Supreme Court of Florida was, therefore, in error in supposing that the warrant was not, and could not be, drawn under the second section. Of course, it could not be drawn under the second section with any intelligent effect, if the first section should be eliminated. On the other hand, it could not have the effect intended by the Legislature and the prosecutor without the second section. The physical and mechanical separation into two sections does not avoid the necessary conclusion that there is one object, one intent, one purpose and one effect only embodied in one statute or act of the Legislature. No actual or practical distinction can be drawn between the statute in its final form and in Chapter 5678, held void in *Goode v. Nelson, supra*.

These considerations forbid the separability of the two sections, even though the Court should agree that the Legislature would have passed the first section alone, had it known that the second was unconstitutional, the last supposition being unthinkable, because the Legisla-

<sup>30</sup>It is, of course, our contention that the statute is obnoxious to the Thirteenth Amendment and the Act of 1867, even though the second section had never been enacted. Its vice and use was well illustrated by Judge Swayne in his charge to the Grand Jury, reported in 138 Fed. 686.

ture was bound to know that this Court had already definitely and decisively held it to be unconstitutional.

The history of the legislation, the omission of the usual separability clause,<sup>31</sup> and a consideration of statutes *in pari materia*, contrasted with contemporary decisions of this Court and the Supreme Court of Florida all show that the Legislature never had any intention of passing any statute under which the State could not convict on bare proof of the breach of the contract to labor.

We have shown also, that, though the second section is conceded to be unconstitutional, it must be read with the first section if it sheds any light on the intention of the Legislature. If, by reading the two sections together, it is apparent that the intent, and the necessary effect, of the statute was to violate the Constitution and Act of 1867, then the legislative intent would not be accomplished by holding that the first section alone was valid, but becomes so altered in meaning as to accomplish no purpose, or a different purpose.

Reading both sections together, it can not be doubted, especially in the light of prior enactments, that the Legislature intended to punish those who promise to work out a debt or advance, and run away before the indebtedness is liquidated, and thus to provide the employer with means of intimidation in order to prevent such a "fraud." To strike down the entire act will no more certainly defeat the intent and purpose of the Legislature, than to strike down the second section.

<sup>31</sup>The Legislature, at the same session, enacted separability clauses in connection with Chapters 7891, 7901 and 7936, showing the practice to add such clauses where separability was intended.

The rule for which the appellee contends is applied in cases where the Legislature has attempted to accomplish a lawful purpose, but through an erroneous interpretation of incidental limitations of the Constitution, has included ancillary provisions, not vital to the legislative objective, which are invalid. But the rule does not extend to cases where the legislative object is violative of the Constitution. It is not the duty of the courts, and they will not, eliminate a section so as to change it into a statute having a lawful object, any more than they will introduce a new section to produce such a result.<sup>32</sup>

And, in the exercise of its ultimate and final jurisdiction on Federal questions, this Court will not recognize any interpretation by a State court that will result in the imprisonment of a citizen of the United States under a statute having an object and purpose forbidden by the Constitution and a valid act of Congress, and when such interpretation substitutes what is, in effect, a new and different statute from that enacted by the Legislature, because that would not be due process of law.

The only solution, it seems to us, is for the courts to hold this vicious statute unconstitutional in its entirety, and remit to the Legislature the task of writing a new statute, if one is needed and desired, to punish actual frauds, stripped of any purpose or possibility of its use to establish or maintain peonage or involuntary servitude.

<sup>32</sup>Neutzel v. Williams, 191 Ky. 351, 230 S. W. 942.

## III.

The statute, and particularly the first section, denies the equal protection of the law and due process of law to appellant and to all in a like situation.

**Result of Upholding Conviction.**

If the judgment of the Supreme Court of Florida is affirmed, the result will be that, although Bailey, Taylor and Pollock lived in different States, they were "guilty" of doing identical acts, which acts were governed by identical statutes so far as the cases are concerned, and two of them are free and the other will be imprisoned. This result will not be produced by the errors or caprice of juries, but by operation of law. Certainly, as a practical matter, Pollock will be denied the equal protection of the law and due process of law. As this Court has hitherto looked to the practical effect of these statutes, we feel justified in asserting that he is denied these rights in legal contemplation, by the decision of the Supreme Court of Florida.

Again looking at the effect of the statute, stripped of the second section, and regarding it realistically and practically, only those who violate it and confess may be convicted, unless juries are permitted to convict on proof similar to that recognized by the second section, in which case the innocent may also be convicted by juries who are willing to reject the protestations of a negro whose conviction is sought by a white man.

Even though every person charged with violating the statute is guilty, they are not deprived of the right to object to the enforcement of it, if the inevitable effect is to convict those who confess, and free those who maintain

**Guilty entitled to equal protection and due process** silence. The guilty are entitled to the equal protection of the laws and to due process to the same extent as the innocent.<sup>33</sup> And when those who are ignorant of the significance of the phrase, "intent to injure or defraud" are induced to plead guilty, their attention being drawn to the debt and their failure to pay it by work or otherwise, and especially if the second section should be read to them, then it seems to us that the plainest terms of due process of law are violated. The fact that the statute is so phrased as to permit and encourage this use of it is convincing that the statute itself deprives the accused of due process, rather than the acts of officers and courts who enforce it.

We have not very seriously urged the proceedings in the original trial court as grounds for the appellant's release. In Florida the statute does not require counsel to be furnished to the accused at county expense, except in capital cases,<sup>34</sup> but he is entitled to be heard by counsel.<sup>35</sup> The record here shows that appellant did not know, and was not advised, of his right to be represented by counsel, and he was not given time to try to procure counsel if he had been so advised, as he might have done though he was at the time without funds. This may not, of itself, be sufficient to show a denial of due process of law. *Betts v. Brady*, 316 U. S. 455.

But it ought to be sufficient to prevent the legalistic view of his plea of guilty which was adopted by the Supreme Court of Florida, and should assist him in his contention that the statute is so framed as to deny due process of law to others and that if actually so operated in his case.

<sup>33</sup>*Hill v. Texas*, 316 U. S. 400.

<sup>34</sup>Fla. Stat., 1941, Sec. 909.21.

<sup>35</sup>Declaration of Rights, Sec. 11.

### Equal Protection of the Law.

It is a well settled rule that in legislating against evil, it is not necessary that all evils be punished, nor is it necessary that a particular evil be fully, completely and entirely abated. Doubtless appellee will argue that, although there may be many frauds not punishable by the criminal law,<sup>36</sup> this fact does not prevent the Legislature from singling out one for punishment. This will be conceded, but the implication that the rule is applicable here will be denied.

It is also a settled rule that the Legislature may classify individuals and things, and adopt or fail to adopt particular laws applicable to one or more of the classes, and different laws, or no law, applicable to the others. This will also be conceded, but likewise its application to the situation here will be denied.

We suppose appellee will concede that the Legislature must provide that the same law shall be applicable to all within a class, if it chooses to legislate at all, where the life, liberty or property of any is to be adversely affected. The problem, then, is to determine whether the classification has been reduced below its lowest terms. If so, the statute is void.

The appellee has contended that the sole purpose, a wholesome purpose, innocent of any guile, oppression or caprice, is to punish fraud accomplished in a particular manner. The point to be argued, however, under this question is whether the Legislature may single out from all of the false promises that are made, only those based upon a contract to perform labor or service, punishing them and leaving others unpunished.

Anyone who obtains money or anything of value as a credit or advance under a contract or promise to perform labor or service, with intent to injure and defraud, is deemed guilty of a misdemeanor. If however, he prom-

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<sup>36</sup>This is not true in Florida. See footnote 16, page 15.

ises, with like intent, to deliver goods and obtains money or advances on the false promise, he is not punished. If he falsely tells his grocer that he has a contract to perform labor or service for someone else, and that he will pay for the groceries that he is buying out of the proceeds of such pretended employment, he is guilty of no offense under this statute. And if his employer obtains his labor or service under a contract to pay him, with the intent to injure and defraud him, the employer is guilty of no crime.

The inhibitions of the Fourteenth Amendment on State legislation have been discussed at length in the case of *Connelly v. Union Sewer Pipe Co.*, 184 U. S. 540. This case has been followed by the Supreme Court of Florida in striking down a statute which required street car companies to provide separate compartments for negroes and whites, but providing that the Act should not apply "to colored nurses having the care of white children or sick white persons." *State v. Patterson*, 50 Fla. 133, 39 So. 400. Arguments as cogent and forceful could be devised to show that there were as good reason for allowing colored nurses in the white compartments while not permitting white nurses in the colored compartment, as can be made for prosecuting laborers who defraud their employers, while leaving unmolested employers who defraud their employees, or either who defraud others by the same tokens.

Very similar statutes were held to offend against the Fourteenth Amendment by the District Court of South Carolina in *Ex parte Drayton*, 153 Fed. 986, and by the District Judge in Alabama, in *Peonage Cases*, 123 Fed. 686. In some respects, the statutes involved in those cases differed from the one under consideration, but as to the point presented, these differences are not material.

The Supreme Court of South Carolina, in the case of *Ex parte Hollman*, 79 S. C. 9, 60 S. E. 19, 21 L. R. A. (N. S.) 242, was very much impressed by the point, but finally decided to give the Legislature the benefit of the doubt,

because, on account of the situation of the South Carolina planters, who might suddenly be bereft of their labor in the midst of a crop season if there was no way of holding them, there might be some grounds for applying the law to farm laborers and not to others who might breach their contract.

If, however, the appellee should prevail on the first question presented in this brief, he will be deprived of any comfort from this case. The very foundation of his argument is that the statute is designed only to punish fraud, and not to coerce labor. As the statute does not coerce farm labor, and farm labor only, then the basis for the classification found by the South Carolina court does not exist here. The statute here seems not to be limited to agricultural labor, but applies to labor or service of any kind. And, if the appellee is able to sustain his position on this question on the ground that the South Carolina court found for supporting the classification, must he not fail on one of the other grounds on which that court declared the Act unconstitutional?

The South Carolina court, however, considered also the question whether there was discrimination against an employee by punishing him for defrauding the employer, but did not punish the employer for defrauding the employee under a like contract. The court held that the Fourteenth Amendment was violated, saying:

"But, even if this statute provided punishment only for fraud in such contracts, it violates the 14th Amendment to the Constitution of the United States, and Article I, Sec. 5, of the State Constitution, in that it does not bear equally on the landlord and the laborer. The parties to a contract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it. Here, the laborer is to be punished for his refusal to perform the service after receiving advances, while no punishment is provided for the landlord who may receive in advance the laborer's service and refuse to pay his wages."

In the case of *State v. Armstead*, 103 Miss. 798, 60 So. 778, Ann. Cas. 1915B, 495, the Supreme Court of Mississippi, as one ground for invalidity of the statute under review, observed that it was intended to punish the laborer, renter or share cropper, while nothing in the law was aimed at the other party to the contract.

We do not know what the appellee will say are the facts that support the legislative attempt at classification. We say that, before the classification can be sustained, the court must be convinced that some of the following reasons are sound:

(1) That laborers and servants are more likely to defraud than are other people.

(2) That employers are more liable to be defrauded, or suffer more from fraud, than other people.

(3) That helpless employers are in greater need of protection from fraudulent laborers than are the more powerful and opulent employees in need of protection from their employers.

It is quite true, at this time, in 1891, and when the present Act was passed in 1919, that employers are and were in need of more laborers than are or were obtainable, and use and used various devices to retain those employed, and to entice those of their neighbors. We do not doubt that this is a good reason, and the only reason that can be found, to support the classification. But the moment this reason is conceded, the true import of the statute becomes apparent. It is simply a scheme whereby the employer induces the laborer to accept a small advance, thereafter paying him in full each pay day, and then, when other employment is offered, the laborer is afraid to accept it, if he does not have enough cash to pay what the employer says that he owes. So the only reason that can logically be assigned to justify the classification leads to conflict with the Thirteenth Amendment.

We say then that, upon whichever horn of the dilemma the appellee chooses to be cast, the result is the same. The statute must violate either the Thirteenth or the Fourteenth Amendment to the Constitution of the United States.

### **Due Process of Law.**

The appellant claims that his imprisonment under the sentence imposed will deprive him of his liberty without due process of law, because the statute upon which it was based is unconstitutional and repugnant to the Act of Congress, in one or all of the particular heretofore discussed. But that is not all.

Liberty, protected by the Fourteenth Amendment is not so restricted as to apply only to imprisonment in the jails and prisons of the State or county. This Court defined the term, as used in that Amendment, in the case of *Allgeyer v. Louisiana*, 165 U. S. 578, in the following words:

"The liberty mentioned in that Amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

If this statute interferes with, or prevents, this appellant from giving up present employment and seeking work elsewhere under what he deems to be better conditions or

wages, merely because he owes his present employer a trifling sum, or even a large sum, or he must suffer imprisonment, then he is deprived of his liberty, without due process of law, even though he continues work rather than suffer imprisonment.

And how can it be argued that the statute does not so operate? It has so affected appellant. Similar statutes would have so affected Bailey and Taylor had this Court not interposed to prevent it.

It follows that the statute, considered as a whole or in parts, is so framed and is so operating that, if permitted to be effective, it deprives the appellant and others in like situations, of their liberty without due process of law. If the statute is thus itself in conflict with the Constitution, it is void for all purposes; so that the manner in which it has deprived appellant of his physical liberty is unimportant.

### Conclusion.

We are quite sure that this brief is too lengthy; yet, when we attempt to shorten it, we cannot decide, what to omit, for, if the Court entertains doubts, we do not know what they are, and if the decision goes against us, we would not be content if we had not urged every argument that has occurred to us on the cleavage of opinion. We shall now summarize our contentions.

The entire history of the legislation, from 1891 until the last Act in 1919, shows a studied and deliberate purpose to compel a man to perform his contract to work. It is possible that there are a few cases where a dishonest person agrees to work for another without any intentions of doing so, and on the strength of his promise, obtains an advance to the loss of the trusting would-be employer. Although the State is under no obligation to protect those whose trust in their fellowmen survives painful expe-

rience, it is within the power of the Legislature to punish a fraud, if it employs constitutional means.<sup>37</sup>

This Court, in every case that has come before it involving this subject, has approached it in realistic manner. It has not permitted itself to be deceived by pretenses as to the intent of the Legislature as false as those claimed to be punished. Arguments that a statute was intended to punish fraud have been of no avail in defense of it, when it is designed directly or indirectly to force a citizen to labor for another, even though he originally, by contract, consented or bound himself to do it. Of course, there are limits to the prohibitions as to legislation, though there are none as to the acts of the individual. Any criminal statute may be used as a threat by which one individual may coerce another into working for him. That might be blackmail or peonage or conspiracy by an individual or individuals, not invalidating the statute. But where the statute deals with labor or services, especially in connection with a debt, the courts have brushed aside technical rules of construction and decided whether it may be conveniently used as an instrumentality in enforcing involuntary servitude. If the statute is appropriately designed for such a purpose, it is unconstitutional.

It is not thought that this Court held the presumption in the Alabama and Georgia statutes to be invalid as unreasonable rules of evidence, and beyond the power of the Legislature to enact, but were void because of the subject matter to which they were to be applied.<sup>38</sup> The

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<sup>37</sup>These cases are so rare that we cannot reasonably assume that the legislature was moved by them in passing this legislation. Considered in connection with the legislative history, we cannot close our eyes to the unconstitutional object of the statute. Moreover, such rare cases could be punished under existing law.

<sup>38</sup>*James Dickenson Farm Mortgage Co. v. Harry*, 273 U. S. 119.

baggage was contaminated by the vehicle carrying it, and its removal would not purify the vehicle.

The whole legislative trend has been an attempt to do indirectly what has been demonstrated, from time to time, cannot be done directly. This purpose has, in our judgment, been ill concealed. It shows that the Legislature, with the decisions of the highest court before it, deliberately placed in the hands of venal employers, aided perhaps by well meaning officers, an instrument whereby the ignorant, helpless and improvident may be compelled to work for such employers so long as an indebtedness, real or pretended may be maintained. The fact that this statute is, for the second time in twenty four years, challenged in an appellate court does not mean that it has not been used frequently for the purpose for which it was designed. The victims seldom, if ever, have the money to bring such cases to the attention of the appellate court, and infrequently have "white folks" been sufficiently interested in them to advance the money necessary to save them from a few weeks in jail, or if they have, a fine can usually be paid with less money, risk and trouble.

We assert that the judgment should be affirmed because the statute is invalid on the following grounds:

1. It directly or indirectly permits involuntary servitude to exist in the State of Florida, in violation of the Thirteenth Amendment to the Constitution of the United States, and Section 56, Title 8, United States Code.

2. It deprives the defendant, and others similarly situated, of the equal protection of the law, and of their liberty without due process of law, in violation of the

Fourteenth Amendment to the Constitution of the  
States.

Respectfully submitted,

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